

# Property Focus Update

## Carbon Reduction Commitment Energy Efficiency Scheme

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The Government's declared aim is to move the UK economy from a high fossil fuel economy to a low carbon economy. Heat and power consumption in the workplace accounts for over 10% of carbon emissions at the present time. The Government's target is a 34% reduction in carbon emissions by 2020 and an 84% reduction by 2050.

We have already seen the European Union Emissions Trading Scheme (EU-ETS) and there have been local Climate Change Agreements but the first stage in achieving these targets on a national level is the introduction of the CRC Scheme which is expected to be activated by a statutory instrument in April 2010.

The Scheme is a new UK-wide mandatory "cap and trade" emissions trading scheme for large businesses and public sector organisations. The Government expects about 5,000 organisations to participate in the Scheme with a further 20,000 organisations having to provide information to the Scheme administrator about their energy use.

The Scheme will require organisations to buy and trade allowances to cover their energy use and CO<sub>2</sub> emissions and to report their consumption on a regular basis. Reporting will involve collating data about energy use on an extremely wide-ranging basis with the results of such reporting being collated into a league table of energy efficiency. This league table will be available for public inspection and is expected to be the key influencing factor on those participating in the Scheme as their commitment to curbing carbon emissions comes under public scrutiny. It will also determine the extent to which a participating organisation can reclaim its purchased allowances.

During the first year of the Scheme, participants' responsibilities will be confined to reporting on their energy consumption but in the second year they will be expected to buy carbon allowances from the Scheme to cover their expected emissions. Initially these allowances will be available at a fixed price of £12 per ton of CO<sub>2</sub> emitted without limit but in subsequent years they will be sold in closed auction and there will be a maximum supply available. In other words, in future years an organisation may not be able to acquire sufficient allowances to meet its annual need in the initial auction.

There is expected to be a secondary market where allowances can be traded and there is also a further "safety valve" available through the EU-ETS.

At the end of the year participating organisations will be expected to 'cash in' their allowances against their actual carbon emissions and will be able to claim against the fund created by the purchase of allowances for a repayment based on their energy performance and league table position. Initially the repayment will be the cost per ton plus or minus 10% but in later years this is expected to increase to plus or minus 50%.

While the Scheme affects only a relatively small number of organisations as participants, the potential for becoming unwittingly involved in the ramifications of the Scheme requires careful consideration. One of the key factors is the presence in an organisation's property of Half Hourly Meters or 00 meters (HHMs). HHMs measure electricity consumption every half hour and report it automatically to the electricity supply company. An organisation which has an annual consumption of over 6,000 Mega Watt Hours in the year is bound to participate in the Scheme. Organisations with over 3,000 but less than 6,000 MWH measured on HHMs are bound to disclose their emissions to the CRC Authority while those with HHMs recording less than 3,000 MWH a year must still provide contact details on line and provide data as required by the CRC registration authority.

The Scheme is enforced by the Environment Agency through the CRC Registration Authority and is backed up by a comprehensive array of fines and other penalties. Offences such as failure to register, failure to provide the requisite annual report, failure to provide accurate information or misreporting carry fines of up to £5,000 – in some cases with heavy additional daily charges until the offence is rectified.

Incorrect reporting leads to a fine of £40 per ton of CO<sub>2</sub> emissions incorrectly reported beyond a margin of 5%. This level of penalty also applies in respect of allowances that should have been obtained and surrendered but were not, and for failing to keep adequate records.


Responsible persons in a participating organisation may be subject to criminal penalties for falsely making misleading statements, falsifying evidence or trying to deceive or mislead the Scheme administrators. Conviction in the Magistrates Court can result in imprisonment for up to 3 months and a fine of up to £50,000. More serious non-compliance with enforcement measures are prosecuted in the Crown Court and can lead to imprisonment on indictment of up to 2 years and an unlimited fine.

One of the most likely areas to impact upon small organisations is in a landlord and tenant relationship where the landlord is part of a large organisation with a major property portfolio requiring it to be registered for the CRC Scheme. The landlord will obviously wish to recover its cost of buying carbon allowances, for the tenant's use, from the tenants but then questions will arise as to how this is to be dealt with. If the Landlord recharges it under the service charge, how does it then account for the returned investment that it receives once the allowances are cashed in? There are a number of possible options which are likely to prove extremely complicated to operate in practice and in a fashion which will be fair and reasonable to the affected tenants. The British Property Federation consultation on the operation of the Scheme in the landlord and tenant arena has just closed and RICS proposals to revise service charges are not expected until next year.

The CRC Scheme is a major initiative by the UK government carrying with it highly onerous requirements for full participation in terms of data recording and reporting but it would be a mistake to assume that it is solely the province of major high energy use organisations.


This is a very brief synopsis of a few salient points of the Scheme. For further information, contact a member of our property department.

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